

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

Status of Claims

Claims 1, 4-12, 14, 15, 18-26 and 28-30 are currently pending in the application of which claims 1, 15, 29, and 30 are independent. Claims 1, 2, 4-12, 14-16, 18-26 and 28-30 were rejected. Claims 3, 13, 17 and 27 were previously canceled. Claims 2 and 16 are canceled herein without prejudice or disclaimer of the subject matter contained therein.

By virtue of the amendments above, claims 1, 8, 15, 22, 29 and 30 have been amended. No new matter has been introduced by way of the amendments above. Entry thereof is therefore respectfully requested.

Summary of the Office Action

Claims 1, 2, 4-12, 14-16, 18-26 and 28-30 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Gasca, Jr. et al. (U.S. Patent Application Publication Serial No. 20050198231), hereinafter “Gasca”, in view of Shabaudin (U.S. Patent No. 6877035), hereinafter “Shabaudin”.

The aforementioned rejections are respectfully traversed for at least the reasons set forth below.

Claim Rejections Under 35 U.S.C. § 103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S.398, 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, “[a]ll claim limitations must be considered” because “all words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to

arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S.398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

- **Claims 1, 2, 4-12, 14-16, 18-26 and 28-30**

Claims 1, 2, 4-12, 14-16, 18-26 and 28-30 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Gasca in view of Shabauddin. The rejection as to canceled claims 2 and 16 is moot but are discussed below with respect to amended independent claim 1. The rejection as to the remaining claims is respectfully traversed.

- **Independent claim 1**

As amended, independent claim 1, *inter alia*, “acquiring additional sliding windows and corresponding additional entitlement values to determine if the request for resources exceeds the additional entitlement values; and indicating that the application is not entitled to the requested resources when the request exceeds the additional entitlement values.”

The Office Action attempts to rely exclusively on Gasca to teach the above-mentioned claim feature. *Office Action*, page 5. More specifically, the Office Action attempts to assert that a new provisioning request in Gasca is equivalent to “acquiring additional sliding

windows and corresponding additional entitlement values to determine if the request for resources exceeds the additional entitlement values”. However, it is clear that the new provisioning requests of Gasca are not equivalent to additional sliding windows and corresponding additional entitlement values. The new provisioning request of Gasca is simply a new request for additional resources. *Gasca, [0057]*. In fact, the additional sliding windows and corresponding additional entitlement values of claim 1 are used to “determine if *the request for resources exceeds* the additional entitlement values” (emphasis added). Thus, the additional sliding windows and the corresponding additional entitlement values are clearly not the same as the new provisioning request itself. Thus, Gasca does not teach or suggest “acquiring additional sliding windows and corresponding additional entitlement values to determine if the request for resources exceeds the additional entitlement values”.

The Office Action also asserts that lines 16-18 of [0057] of Gasca teaches “indicating that the application is not entitled to the requested resources when the request exceeds the additional entitlement values.” In fact, the Office Action asserts that “[u]tility resource system curtails use of resources with respect to specific time windows. ‘Additionally, there could be time constraints ...’ is equivalent to “indicating that the application is not entitled to the requested resources when the request exceeds the additional entitlement values.”’ However, it is clear that because Gasca does not teach or suggest additional sliding windows and corresponding additional entitlement values, thus Gasca cannot teach or suggest determining “when the request exceeds the additional entitlement values” much less “indicating that the application is not entitled to the requested resources when the request exceeds the additional entitlement values.”

The Office Action attempts to rely upon the disclosure contained in Shabauddin to reject other features of independent claim 1 and thus does not make up for the deficiencies of Gasca discussed above.

Accordingly, even assuming for the sake of argument that one of ordinary skill in the art were somehow motivated to combine Gasca and Shabauddin as suggested by the Office Action, the proposed combination would still fail to disclose each and every the claimed invention as set forth in independent claim 1. For at least the foregoing reasons, the Office Action has therefore failed to establish that independent claim 1 is *prima facie* obvious in view of the proposed combination of these references. The Examiner is thus respectfully requested to withdraw the rejection of independent claim 1 and the claims that depend therefrom and to allow all of these claims.

- *Independent claims 15, 29 and 30*

Independent claims 15, 29 and 30 recite features similar to independent claim 1 as discussed above. Thus, claims 15, 29 and 30 recites certain features similar to those recited in claim 1 above. Therefore, claims 15, 29 and 30 are believed to be allowable over the cited documents of record for at least the same reasons set forth above with respect to claim 1.

- *Dependent claims 2, 4-12, 14, 18-26, and 28*

The rejection as to canceled claims 2 and 16 is moot. The rejection as to the remaining claims is respectfully traversed. Claims 4-12, 14, 18-26, and 28 are dependent from one of independent claims 1 and 15. Thus, it is also believed to be allowable over the

cited documents of record for at least the same reasons as set forth to independent claims 1 and 15 above.

In view of the foregoing, it is therefore respectfully requested that the rejection of claims 4-12, 14, 18-26, and 28 be withdrawn, and these dependent claims be allowed.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited. Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

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